Supreme Court, U.S.
FILED
05 1633 JUN 19 2006
OFFICE OF THE CLERK

No.

In the Supreme Court of the United States

ROBERT ELY,

Petitioner,

vs.

MICHAEL SHEAHAN,
Sheriff of Cook County, Illinois,

Respondent.

Petition for Writ of Certiorari to the Appellate Court of Illinois, First Judicial District

PETITION FOR WRIT OF CERTIORARI

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I

QUESTION PRESENTED

Whether the Court's Fourth Amendment-probable cause opinion in *Michigan v. Duran*, 439 U.S. 282, 99 S.Ct. 530 (1978), including its "summary extradition" language, can be reconciled with the decision below, which decision conflicts with this Court's precedents which hold that an extradition-relator must be provided an opportunity to conclusively prove, beyond a reasonable doubt, that he or she was not in the "demanding" state at the time of an alleged criminal offense?

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ROBERT ELY,

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PETITION FOR A WRIT OF CERTIORARI
TO THE FIRST DISTRICT,
ILLINOIS APPELLATE COURT

Robert F. Ely respectfully petitions for a Writ of Certiorari to review the judgment of the First District, Illinois Appellate Court in this case.

OPINION BELOW

The September 24, 2003 *Ore tenus* ruling of the Circuit Court of Cook County, Criminal Division granting habeas relief and quashing extradition warrants is unreported. (App. 1- 9). The respondents direct appeal reversed the extradition/habeas ruling in a published opinion from the

First District, Illinois Appellate Court, Second Division entered on September 30, 2005 (reported at 361 Ill.App.3d 605, 838 N.E.2d 26). App. 10-25. Ely's appellate petition for rehearing was denied on December 30, 2005 (unreported; App. 26). Ely's timely petition for discretionary review in the Illinois Supreme Court was denied on March 29, 2006 (unreported; App. 27).

JURISDICTION

The judgment of the First District, Illinois Appellate Court, Second Division was entered on September 30, 2005. Appellate rehearing was denied, and the Illinois Supreme Court denied discretionary review on March 29, 2006. The Circuit Court of Cook County, Criminal Division, had jurisdiction over Ely's extradition proceedings pursuant to, *inter alia*, 725 ILCS 225/10, *et seq.* (West 2002; *infra* at App. 28-39). The Illinois Appellate Court had jurisdiction pursuant to 725 ILCS 225/10 (West 2002); App. 31.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTION, STATUTES AND RULES

U.S. Constitution, Art. IV, § 2, cl. 2 states:

> A person charged in any State with Treason, Felony, or other Crime, who shall flee from Justice, and be found in another State, shall on Demand of the executive Authority of the State from which he fled, be delivered up, to be removed to the State having Jurisdiction of the Crime.

U.S. Constitution, Fifth Amendment

> No person shall be * * * [nor] be deprived of life, liberty or property, without due process of law * * *.

U.S. Constitution, Sixth Amendment

> In all criminal prosecutions, the accused shall enjoy the right * * * to be confronted with the witnesses against him; * * *

U.S. Constitution, Fourteenth Amendment

> . . . No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

18 U.S.C. § 3182. **Fugitives from State or Territory to State, District, or Territory**

> Whenever the executive authority of any State or Territory demands any person as a fugitive from justice, of the executive authority of any State, District, or Territory to which such person has fled, and produces a copy of an indictment found or an affidavit made before a magistrate of any State or Territory, charging the person demanded with having committed treason, felony, or other crime, certified as authentic by the governor or chief magistrate of the State or Territory from whence the person so charged has fled, the executive authority of the State, District, or Territory to which such person has fled shall cause him to be arrested and secured, and notify the executive authority making such demand, or the agent of such authority appointed to receive the fugitive, and shall cause the fugitive to be delivered to such agent when he shall appear. If no such agent appears within thirty days from the time of the arrest, the prisoner may be discharged.

725 ILCS 225/1, *et seq.*, recites the impacting statutory enactment in connection with Illinois habeas corpus/extradition, reproduced at App. 28-39.

STATEMENT

Robert F. Ely (Ely or petitioner) and Michael Miller (Miller) were the subjects of an extradition proceeding predicated on events occurring in East Pointe, Michigan during December 2001. During February 2002 both were arrested in Cook County, Illinois based on Michigan Governor warrants charging the commission of burglary-related offenses on December 11-14, 2001. Both challenged extradition to the State of Michigan by asserting, within the fabric of Illinois habeas proceedings, that neither were in Michigan during December 2001. App. 40-41. The extradition/habeas bench proceedings in the Circuit Court of Cook County, Illinois, Criminal Division, commenced on August 29, 2002. On September 24, 2003 Chief Judge Paul P. Biebel, Jr., following extended Cook County Circuit Court hearings, quashed the extradition warrants finding that Ely and Miller had proved, beyond a reasonable doubt, that neither were in the State of Michigan on the offending December dates. App. 7-9.

The Sheriff of Cook County, respondent below, challenged the circuit court ruling, and on September 30, 2005, a panel of the First District Appellate Court reversed holding that, *inter alia, Michigan v. Duran*, 439 U.S. 282, 99 S.Ct. 530 (1978), mandated vacation of the habeas ruling below. App. 17, 19-21. The Illinois Supreme Court rejected review and this Petition ensues (Miller declined to participate in the appellate process and has not joined in this petition).

1. **Hearing Date: August 29, 2002:** On December 11, 12 and 14, 2001, in East Pointe, Michigan, two complainants maintained that valuables were taken from their respective homes by "white" or "Italian-appearing" males. ROP 8/29/02 at Tr. 99-103. Each complainant maintained that they had admitted one or more of the men into their homes while being solicited for various home repairs.

2.. The pivotal prosecution witness, Lt. John Calabrese (Lt. Calabrese), of the East Pointe Police Department, testified that he commenced an investigation on December 13, 2001. While attempting to identify the offenders, he showed the complainants a book containing photographs of "Chicago gypsies," same having been received from the Illinois State Police. ROP 8/29/02 at Tr. 75. He testified that Ely was identified from the photo array book by a relative of the victim, although conceding [that] there was no physical or independent evidence such as fingerprints, proceeds, nor any vehicle description linking petitioner to the December 2001 offenses. *Id.* at 64, 68-69, 89. Thus, there was a single eye-witness who identified petitioner as the December 11 and 12 offender. *Ibid.* According to Lt. Calabrese, the petitioner was identified by the same complainants who maintained that petitioner returned on December 14 and committed a burglary-related offense. *Id.* at 92-94 (to clarify: Lt. Calabrese testified that petitioner was identified by the December 12 complainant–on December 13–but that petitioner returned to the victim's home on December 14 and for the second time was involved in a theft at the victim's home.[1]

While discussing the description of the offenders, Lt. Calabrese acknowledged that petitioner "is a distinct Gypsy" . . . "he is very distinctive looking" . . . "he appears Hispanic." *Id.* at 103. The offender (petitioner) was described as clean shaven, in his mid-40s, 6'2", 250 lbs. and the second a male white in his 40s, 5'11", 180 lbs. *Id.* at 101. Lt. Calabrese agreed that petitioner did not fit any of the descriptions, and in the "Gypsy book" petitioner had a distinct mustache and looks the same in the photo book as in court. *Id.* at 100,103.

Petitioner's first witness, Ms. Pleczka, testified that she is the owner of a nail and skin care business located in the Chicago area and that Ely was one of her customers. Her appointment book disclosed that on December 11, 2001 Ely had a manicure at 1:30 in the afternoon and had a later appointment for a massage which was not kept. ROP 8/29/02 at Tr. 17-22. Ms. Pleczka also testified that

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[1] The Michigan extradition filings omitted alleging petitioner committed a criminal offense on December 14, 2001. ROP 8/29/02 at Tr. 85-86.

petitioner had been her customer for several years, same with his family, they are not related and simply have a business relationship. *Id.* at 25-26.

Dewey Paccagini testified that he was a self-employed insurance broker for over 15 years and had known petitioner and his family for over 4 or 5 years. ROP 8/29/02 at Tr. 37-38. During the afternoon of December 11, 2001 he was at petitioner's home reviewing various insurance policies with petitioner and his family and clearly recalled the date–December 11–because it's his birthday and he wanted to get home in that his wife was making dinner. *Id.* at 39-40.

3. **Hearing Date: September 25, 2002:** Petitioner's counsel submitted a certified copy of an earlier habeas petition for an identical warrant out of the state of New York which was quashed based on flawed identification [of Ely]. The judge entering that order was former Chief Judge Thomas R. Fitzgerald, now an Illinois Supreme Court Justice. ROP 9/25/02 at Tr. 121-22.

Anna Lopez, an employee of the Department of Revenue for the City of Chicago, testified that on December 12, 2001 petitioner was in her office while attempting to secure a business license. ROP 9/25/02 at Tr. 123-40. In summary, Ms. Lopez testified that she interviewed petitioner regarding certain forms which were necessary in order to obtain a business license which petitioner was seeking under and style "Sam's Roofing." *Id.* at 126-27. According to Ms. Lopez, she and petitioner argued regarding the content of certain City of Chicago forms; petitioner felt that she was not providing adequate service. Thereafter, she provided petitioner her business card and wrote that he was to return on December 14, 2001. *Id.* at 128-30 (her business card with her writing was admitted as Petitioner's Exh. 2). Further, according to Ms. Lopez, petitioner returned on December 14 without the correct information or a certificate of insurance. Ms. Lopez described both meetings as somewhat difficult, and on December 14 there was a "confrontation" between the two. *Id.* at 130-32.

Under cross-examination she repeated that the December 12 conversation "got heated" because petitioner felt she was not being helpful and that's why she provided a return

appointment for December 14. *Id.* at 145-48. Also, under cross, she confirmed that it was her writing on the card and that when Ely returned on December 14 he had not completed the necessary paperwork. *Id.* at 157-58.

She was interviewed by the City of Chicago Inspector General after the extradition-prosecutor forwarded to that office an affidavit she had executed regarding the events of December 12 and 14, 2001. *Id.* at 167-98 (the then-Inspector General of the City of Chicago testified as a prosecution witness on a subsequent date regarding his interview with Ms. Lopez).[2]

4. **Hearing Date: November 18, 2002**: Petitioner was granted leave to re-open his case and submit an offer of proof regarding the Michael "Sonny" Miller (not the Michael Miller involved below) who pled guilty to a trio of burglary-related misdemeanors in East Pointe, Michigan. ROP 11/18/02 at Tr. 413-21. Petitioner's counsel asserted that after Sonny Miller was sentenced he spoke with Lt. Calabrese and related that petitioner was not part of the "crew" committing the East Pointe, Michigan burglaries during December 2001.

The State proffered the testimony of Mary Lou Eisenhauer. She was Ms. Lopez's supervisor and, in summary, explained that the City of Chicago computers had no information regarding petitioner's visits with Ms. Lopez on December 12 or 14, 2001. However, she also explained that during 2001 there was a six-month backlog of documents which had not been "scanned" into the City of Chicago computers and, in all probability, those records may still be in the basement of City Hall or the warehouse. ROP 11/18/02 at Tr. 499-511. Further, Ms. Lopez, failed to follow an unwritten policy because she did not consult or advise any supervisor regarding the affidavit she executed or her subpoena to testify. *Ibid.* The trial court noted that Ms. Eisenhauer was a very "adversarial" witness. *Id.* at 526. In essence, Ms. Eisenhauer's testimony was presented

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[2] On October 24, 2002 Miller proffered witnesses in support of his habeas petition; petitioner has omitted that testimony as non-pertinent.

in an effort to undermine the testimony of Ms. Lopez regarding petitioner's City Hall visits on December 12 and 14, 2001.

Alexander Vroustouris, the [then] City of Chicago Inspector General testified that Ms. Lopez was twice interviewed by his office. ROP 11/18/03 at Tr. 556-74. His investigation of Ms. Lopez commenced after the Cook County prosecutor provided an affidavit Ms. Lopez executed regarding her interaction with petitioner. *Id.* at 578. In any event, the dual interviews related to Ms. Lopez failing to follow an unwritten City of Chicago policy regarding her being interviewed by defense counsel before and after her execution of an affidavit and receipt of a subpoena to testify in these proceedings. In the end, she was not disciplined nor did her duties change. *Id.* at 564.

5. **Hearing Date: April 30, 2003:** Alex Johnson, an attorney and former Cook County prosecutor, had traveled to a Michigan County Jail to interview "Sonny" Miller regarding December 2001 events. ROP 4/30/03 at Tr. 657-62. Johnson was in a position to testify that "Sonny" Miller had executed an affidavit which recited that petitioner was not part of Miller's "crew" that had planned, committed, and profited from the Michigan burglaries during December 2001. *Ibid.* The habeas court rejected the offer of proof and "Sonny" Miller's affidavit. *Ibid.*

A private investigator, Rosa Navarez, testified that she went to the business license office in Chicago's City Hall on four-different occasions during November and December 2002. She testified that on November 25, 2002 her visit to the business license office included her requesting a home repair license (Defense Exh. 8). She was given a form and was told to complete the form and return. *Id.* at 674. She returned the next day, saw the same clerk, and requested a home business application . . . she was given a different series of forms and, again, told to return with additional information and proof of insurance. ROP 4/30/03 at Tr. 675-79. When Ms. Navarez noted that the forms were different, she spoke with a supervisor who related that the [City of Chicago] forms are changed "all the time." *Id.* at 679.

She returned to City Hall on December 6, 2002 seeking a home repair business application and was tendered, again, a series of (still) different forms (these forms were admitted as Defense Exh. 9-12). This clerk told her to take the forms, depart and return same when completed. *Id.* at 680-83. Ms. Navarez returned to the same office on December 11, having completed a port on of Defense Exh. 9 . . . and, when she verbally changed the form from "residential" to "commercial" home repair, the need for insurance was deleted. *Id.* at 688-89. Only on the last visit, December 11, 2002, was she provided with "an account number." ROP 4/30/03 at Tr. 692-94.

In substance, Ms. Navarez's testimony negated testimony from prosecution witness, Ms. Eisenhauer, who steadfastly maintained that petitioner's December 12 and 14 exhibits were atypical because every form or application is given an immediate "account number." The trial court's factfindings referred to the testimony of Mesdames Lopez and Eisenhauer. App. 6.

6. **Hearing Date: August 13, 2003:** The habeas court heard the arguments of counsel. Petitioner maintained, *inter alia*, that based on an antecedent New York extradition warrant (still active), had petitioner traveled to Michigan he would have been vulnerable to an arrest based on that extradition warrant. ROP 8/13/03 at Tr. 316-19.[3] Further, petitioner had presented live witnesses and exhibits establishing that petitioner had not left Illinois and, therefore, could not be "a fugitive from justice." *Ibid.* Petitioner also contended that the testimony provided by Lt. Calabrese–*the only identification testimony*–was highly suspect, biased and when "Sonny" Miller confessed to the offenses he told Lt. Calabrese that Ely was not involved. *Id.* at 322-23. And, the single photo of petitioner in the "Gypsy book" failed to accurately depict petitioner. *Id.*

The State argued in rebuttal claiming that since, according to Lt. Calabrese, petitioner had been identified from

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[3] The Cook County, Illinois prosecutor's office is currently appealing petitioner's extradition rejection in the New York case, *Robert Ely v. Illinois State Police, et al.*, 1-05-1840 (pending in the First District, Illinois Appellate Court).

the "Gypsy book" that was sufficient to warrant rejecting habeas relief and executing the Michigan warrant. *Id.* at 337-52. The State posited that the evidence was only "contradictory," and therefore extradition should proceed. *Ibid.*

Petitioner's rebuttal argument pointed out that under the Illinois Act (App. 28-39, *infra*) petitioner was entitled to a hearing to determine whether he was a fugitive "from justice" meaning that the habeas court, was required to make a factual determination regarding whether petitioner was in the state of Michigan on the offending dates. *Id.* at 353-61.

7. **Hearing Date: September 24, 2003:** Chief Judge Biebel articulated findings of fact and conclusions of law which rejected petitioner's technical challenge to the extradition documents, explaining that the documents provided a *prima facie* case. App. 3-5. The habeas court's analysis then turned to whether petitioner (and Miller) were "fugitives from justice." The court analyzed the testimony of several witnesses finding that the "method" by which petitioner and Miller were identified called into question "credibility" regarding the reliability of the eye-witness identifications. The court noted that the burglary victims . . . two of whom were close to "ninety" years old . . . were shown photos of only Chicago Gypsies, and the descriptions provided failed to match Ely or Miller. App. 8-9. Thus, petitioner proved "conclusively or beyond a reasonable doubt" that he was not in the state of Michigan on December 11 or 12, 2001.

The Cook County Sheriff prosecuted a direct appeal from the habeas court's September 24, 2003 order. A panel of the First District, Illinois Appellate Court reversed, and, relying on *Michigan v. Duran*, 429 U.S. 282, 99 S.Ct. 530 (1978), seemingly concluded that the habeas court should not have conducted a hearing to determine whether petitioner was a "fugitive from justice." App. 17 at n. 2, 19-21.

REASONS FOR GRANTING THE WRIT

By virtue of its failure to understand the holding in *Michigan v. Duran*, 439 U.S. 282, 99 S.Ct. 530 (1978), the Illinois Appellate Court created a clear conflict with this Court's precedents.

A. This Court should resolve the clear conflict–based on the decision below–over whether an extradition-relator is entitled to a full and fair hearing regarding whether he or she is a "fugitive from justice."

In *Michigan v. Duran* the court granted certiorari on a single issue:

> Did the Michigan Supreme Court misconstrue the Fourth Amendment and the Extradition clause of the United States Constitution when it held that a fugitive may challenge a demanding state's extradition documents on the basis of lack of probable cause under the Fourth Amendment, in a collateral proceeding in the asylum state's courts?

439 U.S. at 291 (Blackmun, J., concurring). In *Duran*, the Michigan Supreme Court reversed lower court orders directing *Duran's* extradition to Arizona, while holding that, under the Fourth Amendment, he could challenge probable cause *vel non* regarding the underlying Arizona extradition documents. Chief Justice Burger's opinion for the Court, reversed explaining that the Fourth Amendment played no role in determining probable cause within the underlying extradition documents. 439 U.S. at 290. Justice Blackmun's concurring opinion (joined by Justices Brennan and Marshall) maintained that even though the cert question related to the Fourth Amendment, the Court's opinion failed to mention it [the Fourth Amendment]. *Id.* at 290-91.

True enough, *Duran*, included: "Interstate extradition was intended to be a summary and mandatory executive proceeding derived from the language of Art. IV, § 2, cl. 2 of the Constitution * * * ." 439 U.S. at 288, but qualified that language:

> Once the governor has granted extradition, a court considering release on habeas corpus can do no

> more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable.

439 U.S. at 289.

This petition involves only (d) "whether the petitioner is a fugitive." The Illinois Appellate Court conflated the quartet of extradition components, all-but-eliminating the question "whether the petitioner is a fugitive." The appellate court seemingly decided, in clear conflict with this Court's precedents, that an extradition-relator, filing a habeas challenge, is somehow precluded (because of the "summary" nature of extradition proceedings) from having the habeas court determine whether he or she "is a fugitive from justice."

The Court's cases, reaching back to at least 1885, are otherwise. As example, in *Munsey v. Clough*, 196 U.S. 364, 25 S.Ct. 282 (1905), the Court affirmed an extradition order where Martha S. Munsey contended that the documents seeking her extradition from New Hampshire to the Commonwealth of Massachusetts were technically flawed, 25 S.Ct. at 283-84. The Court, with the benefit of antecedent authority, held that Ms. Munsey was subject to extradition because the State had made out a *prima facie* case and she "waived any right to give further evidence." *Id.* at 284. However, pertinent to this petition, the Court explained:

> When it is conceded, or when it is so conclusively proven that no question can be made, that the person was not within the demanding state when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding state, then the court will discharge the defendant. * * *

25 S.Ct. at 285 (parallel citations omitted). Thus, the Court gave its imprimatur to the proposition that [a] relator could constitutionally challenge whether he or she was a "fugitive from justice."

In *State of South Carolina v. Bailey*, 289 U.S. 412, 53 S.Ct. 667 (1933), the Court reversed the granting of habeas relief where *Bailey* had been charged with murdering a North Carolina police officer at about 10:30 p.m. on May 1, 1932. Shortly thereafter, based on a North Carolina Governor warrant, *Bailey* was arrested in South Carolina and in advance of extradition, filed a habeas petition, maintaining that he was not in North Carolina on May 1, 1932.

During a habeas evidentiary hearing the court received testimony from a trio of eye-witnesses, including two police officers, positively identifying *Bailey* as the person who shot and killed officer Hunt on May 1st. *Bailey* presented evidence that during the afternoon and evening of May 1st he was in South Carolina–drinking and gambling–and, at some point had been shot, driven to his brother's home, and then to a hospital where he was treated under an assumed name, 289 U.S. at 417-18. The *nisi prius* court held that *Bailey* was not a fugitive from justice from North Carolina.

On certiorari, this Court reversed explaining, inter alia, that the record disclosed only a "conflict in the evidence," and Bailey had failed to "conclusively prove" that he was not in North Carolina on May 1, 1932. 289 U.S. at 421.[4] Pertinent to this petition, the Court assayed the habeas evidence noting that a trio of eye-witnesses testified and positively identified Bailey as the man who shot and killed the North Carolina police officer during the evening hours of May 1, 1932. In contrast to *Bailey*, here, a single East Pointe police officer provided double or triple hearsay that petitioner may have been identified by one or two individuals, after viewing a "Chicago Gypsy mug book," as having been one of several burglary-offenders. Further, the provided descriptions failed to match petitioner.

In *California v. Superior Court of California*, 482 U.S. 400, 107 S.Ct. 2433 (1987), the Court, while reversing the decision below, held that where the extradition documents–on their face–were adequate to support extradition, and *there was no question that the relator was a "fugitive" from justice*, nuanced legal or technical challenges to the

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[4] Justices Brandeis and Butler dissenting. *Id.* at 21.

charging extradition documents were unavailing.[5] Justice Stevens dissented (joined by Justice Brennan) and, *apropos* to this petition, explained:

> Despite this seemingly sweeping language, we have previously rejected the claim that a person could be considered a fugitive if he could establish that he was outside of the demanding State at the time of the alleged offense, even if "constructive presence" would be a sufficient basis for criminal liability. In *Munsey v. Clough*, we wrote:
>
> When it is conceded, or when it is so conclusively proved, that no question can be made that the person was not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a constructive presence at that time, in the demanding State, then the court will discharge the defendant. * * * .

482 U.S. at 419 (quotation marks and supporting citations omitted).

In contrast to *Munsey* and *Superior Court of California*, *ante*, the granting of habeas relief was *not* predicated on legal or technical challenges to the underlying extradition documents, nor, as in *Bailey*, did the prosecution provide in-court, positive identification linking Petitioner to the burglary-related offenses occurring on December 11 and 12, 2001. Rather, as petitioner's Statement reveals, *ante* at pp. 4-5, only Lt. Calabrese provided double or triple hearsay testimony regarding Ely's *identification* as one of the putative offenders.[6] And, in stark contrast to that testimony, petitioner proffered the testimony of credible live witnesses, supported by exhibits, conclusively proving, beyond a reasonable doubt, that petitioner was not in

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[5] Petitioner's technical challenges to the extradition documents were similarly rejected by the habeas court. App. 3-5.

[6] In *Alexandrov v. Gonzales*, 442 F.3d 395 (6th Cir. 2006), the court, while vacating a deportation order, explained "Highly unreliable hearsay might raise due process problems," *id.* at 405, citing, *inter alia*, *Yongo v. INS*, 335 F.3d 27, 31 (1st Cir. 2004) and *Benslimane v. Gonzales*, 430 F.3d 828 (7th Cir. 2005) (Posner, J.).

Michigan during mid-December 2001. App. 6-9.

In *United States ex rel. McCline v. Meyering*, 75 F.2d 716 (7th Cir. 1935), the court, with one judge dissenting, reversed habeas rejection from an Illinois reviewing court. Citing this Court's precedent, the Court explained:

> The statute is one involving the substantial rights of citizens, and its essential elements must be strictly followed. * * *. Only by faithfully following the provisions of the statute may a person be lawfully deprived of his liberty and extradited from an asylum state to another state, there to be tried for the commission of a crime. The alleged fugitive has a right not to be imprisoned or dealt with by the states in disregard of those safeguards provided by the Constitution and statutes of the United States. Compton v. Alabama, 214 U.S. 1, 6, 29 S.Ct. 605, 53 L.Ed. 885, 16 Ann.Cas. 1098.

75 F.2d at 717-18. As observed in *Meyering, ante*, the alleged "fugitive" has a right "not" to be imprisoned by the demanding jurisdiction in disregard of safeguards provided by the "Constitution and statutes." At bar, the Constitution and statute(s) were faithfully augmented by the habeas court, said court concluding that petitioner was not a "fugitive from justice."

Thus, the decision below most assuredly conflicts with this Court's precedents. This conflict is deep, ripe for resolution and this petition provides an appropriate vehicle for resolving a repetitive issue which frequently surfaces within our criminal justice system.

B. Certiorari should be granted because the decision below plainly conflicts with Anderson v. City of Bessemer, 470 U.S. 564 (1985) which held that trial court credibility rulings and evaluations should be the subject of affirmation predicated on the appellate "clearly erroneous" doctrine.

The Court's decisions regarding trier-of-fact rulings, including credibility determinations, have culminated in opinions which should inform the decision in this case. For

example, in *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 105 S.Ct. 1504 (1985), the Court, while reversing an appellate decision which vacated a favorable trial court ruling on plaintiff's behalf in a sex discrimination case, elaborated on the reasons behind acceptance of trial court factfindings. The Court explained that "[a] finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." 470 U.S. at 573 (supporting citations omitted). The Court noted:

> If the district court's account of the evidence is plausible in light of the record viewed in its entirety, the court of appeals may not reverse it even though convinced that had it been sitting as the trier of fact, it would have weighed the evidence differently. Where there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous. * * *
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> —♦—
>
> When findings are based on determinations regarding the credibility of witnesses, Rule 52(a) demands even greater deference to the trial court's findings; for only the trial judge can be aware of the variations in demeanor and tone of voice that bear so heavily on the listener's understanding of and belief in what is said. * * * But when a trial judge's finding is based on his decision to credit the testimony of one of two or more witnesses, each of whom has told a coherent and facially plausible story that is not contradicted by extrinsic evidence, that finding, if not internally inconsistent, *can virtually never be clear error.* * * *

470 U.S. at 573-75 (*Emph. Added*, original quotation marks and supporting citations omitted; Powell and Blackmun, J.J., concurring).

At bar, the appellate panel rejected the habeas court's witness credibility findings as "clearly erroneous," which runs counter to, and clearly conflicts with *Anderson*. App. 24-25. The record below fails to remotely suggest that the reversing appellate panel saw or heard from any of the witnesses testifying before the habeas/extradition court.

Anderson confirms that the trial judge considers demeanor, tone of voice and appearance, which blend to "bear so heavily" on the trial court's understanding and belief in what is said. *Cf., Wainwright v. Witt*, 469 U.S. 412, 434, 105 S.Ct. 844, 857 (1985) (Face to face with living witnesses the original trier of the facts holds a position of advantage from which appellate judges are excluded. In doubtful cases the exercise of his power of observation often proves the most accurate method of ascertaining the truth. . . . How can we say the judge is wrong? We never saw the witnesses. . . . To the sophistication and sagacity of the trial judge the law confides the duty of appraisal.) (quotation marks and supporting citations omitted). Accord: *United States v. Pedroza*, 269 F.3d 821, 826 (7th Cir. 2001) ("Accordingly, the judge credited the agents' version of the events and refused to credit the *Pedrozas*' versions. We give special deference to such credibility determinations, which can virtually never be clear error.").

United States v. Radditz, 447 U.S. 667, 100 S.Ct. 2406 (1980), bolsters review and reversal. In *Radditz*, a United States Magistrate took testimony and received evidence in connection with a motion to suppress various statements by *Radditz* in advance of his 1976 arrest for federal firearm violations. Following an evidentiary hearing, the magistrate forwarded a report to the district court recommending suppression rejection. The district court accepted the magistrate's recommendation and denied suppression. A stipulated trial ensued, and notwithstanding *Radditz's* eight prior felony convictions, he was sentenced to 6 months in custody. 447 U.S. at 672. The Court of Appeals for the Seventh Circuit reversed, finding that the defendant was deprived of due process because the district court failed to hear the conflicting suppression testimony. 592 F.2d at 986. *Certiorari* was granted to consider whether the district court was required to hear live testimony as opposed to relying on the record developed before the magistrate. 447 U.S. at 669. Chief Justice Burger's opinion for the Court recited that there was no due process nor statutory impediment to the district court adopting that which occurred before the United States Magistrate, notwithstanding respondent's challenge . . . "[t]he one who decides must hear." *Id.* at 677, citing *Morgan v. United States*, 298 U.S. 468, 481, 56 S.Ct. 906 (1936). The Court

also explained that if the district court elected to reject Magistrate's credibility findings, when dispositive, then presumptively the district court would order witness-testimony, 447 U.S. at 681 n. 7. In dissent, Justice Marshall while citing the same principle ("[t]he one who decides must hear") explained that the principle is not limited to the constitutional interests in accurate factfinding:

> It also derives from the notion that, as a matter of basic fairness, a person facing the prospect of grievous loss is entitled to relate his version of the facts to the official entrusted with judging its accuracy.

447 U.S. at 696.

It is pristine that Chief Judge Biebel considered the testimony from multiple witnesses and received over 15 prosecution and petitioner exhibits. He carefully assayed the multiple facts and evaluated witness credibility in advance of finding that petitioner had conclusively proved, beyond a reasonable doubt, that he was not in the state of Michigan during mid-December 2001. App. 6-9.

In the case at hand the Illinois Appellate Court disregarded *Anderson* and *Radditz* while finding that the habeas court's factfindings were "clearly erroneous." That, if the Court please, directly conflicts with *Anderson* and *Radditz*. Hence another reason for granting review.

—♦—

The case below has generated a clear conflict not only with the opinions of the Court, but with prior Illinois decisions mandating that the relator have a full and fair opportunity to conclusively demonstrate, beyond a reasonable doubt, that he or she is [was] not a "fugitive from justice," *cf., Illinois v. Cheek*, 93 Ill.2d 82, 442 N.E.2d 877 (1982) (affirming habeas discharge where habeas court received evidence conclusively demonstrating that relator had never been in the state of Florida, and trial court credibility determinations were to be honored; 442 N.E.2d at 882).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioner
Robert Ely

APPENDIX

STATE OF ILLINOIS)
) ss.
COUNTY OF C O O K)

IN THE CIRCUIT COURT OF COOK COUNTY,
ILLINOIS COUNTY DEPARTMENT
CRIMINAL DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS	)	
vs.	)	
	)	No. HC 50232-01
ROBERT ELY and MICHAEL MILLER	)	No. HC 50236-01

REPORT OF PROCEEDINGS at the hearing of the above-entitled cause, had before the HONORABLE PAUL P. BIEBEL, Jr., on the 24th day of September 2003.

APPEARANCES:

HON. RICHARD A. DEVINE
State's Attorney of Cook County
BY: MS. DIANE CHASTER and MR. MARK ERTLER Assistant State's Attorneys Appeared on behalf of the People;

MR. ROBERT NOVELLI and
MR. TIMOTHY ROELLIG
Appeared on behalf of Robert Ely;

MR. ROBERT LUCENTI and
MR. REX JOHNSON
Appeared on behalf of Michael Miller

JOANN KROLICKI, CSR
Official Court Reporter
Illinois License No. 084-002215

THE CLERK: Robert Ely, Michael Miller. MR. NOVELLI: For the record, Robert Novelli and Tim Roellig on behalf of Robert Ely.

MR. LUCENTI: Robert Lucenti and Rex Johnson on behalf of Michael Miller.

MS. CHASTER: Diane Chaster and Mark Ertler on behalf of the People.

THE COURT: Thank you.

We're here today for ruling on the petitions for habeas corpus that have been filed separately by Michael Miller and Robert Ely.

Mr. Ely's case number is HC No. 50232 and Mr. Miller's case number is HC No. 50236.

I have a ruling which I'll read for the purposes of the record today, which should take 10 or 15 minutes.

First of all, I would like to compliment the lawyers in this case. We've been trying this case for the better part of the year, if not a little more than a year, and I think the lawyering in this case has been excellent. The oral arguments and briefings were all excellent. I think you have all lived up to your reputations as thorough, competent professionals.

I know that Mr. Nigro, who was involved in this case, is not here today. Apparently, he is retiring at the end of the week, and I would like, at least for the record, to wish him well in his future endeavors,

The pleadings were excellent and have helped us focus on the issues and allowed us to reach a decision in this case.

Both Mr. Miller and Mr. Ely as relators in this proceeding were arraigned on a Governor's warrant of arrest. Their respective' warrants recite some common allegations; namely, bet: Ely and Miller were charged in Michigan's Macomb County with having committed while personally present there the crimes of home invasion and conspiracy to home invasion. Miller also was charged with unarmed robbery. It is further alleged that Ely and Miller thereafter fled the state of Michigan and sought refuge here in the State of Illinois.

The charges against Ely and Millet-are not identical. The state of Michigan alleges that Ely committed the above-mentioned crimes in Macomb County, Michigan, on December 11th and December 12th of the year 2001. It is alleged that Miller committed similar crimes on different dates, December 11th and December 13th, 2001.

At first glance, the differencebetween the dates appears to be a minor distinction. But when reminded of the fundamental question before this Court, -were Ely and Miller present in Michigan on the days each was alleged to have committed the crimes there, the distinction grows i r. importance.

Before turning to the fundamental question, there's a preliminary technical question which needs to be examined.

The rendition papers request a, quote, "Robert F. Ely," but attached to those same papers is a photograph of a relator, "Robert Ely, NMI," which I believe means no middle initial. By attaching this photograph, the state, the relator contends, has determined that Robert Ely has no middle name. Ely then argues the state now bears the burden of showing that Robert Ely is the Robert F. Ely requested.

In People versus Cheek, 93 Ill. 2d, 82, most particularly, Page 90, a 1982 case, the Illinois Supreme Court announced principles to guide lower courts when confronted with the question of identity in the context of a governor's warrant.

If the person arrested has the same name as the person appearing on the Governor's warrant, Cheek placed the burden on the arrestee to show that he's not the person whose extradition is demanded. Cheek instructs this Court and all trial courts to place the burden of proving the arrestee's identity on the state if the Governor inserts in the warrant a name or an alias different from that which appears on the face of the indictment or affidavit.

Here, the name different from Robert F. Ely was attached to Robert F. Ely's requisition papers. This insertion was improper. As Cheek held, neither the Governor of the demanding or refuge state "can insert in the requisition or warrant any name or names other than that which appear

in the face of the indictment or affidavit which constitutes the foundation for the requisition." Citing a case called People ex rel. Maypole versus Meyering, 358 Ill. 589, 594, a 1934 case.

Because a name other than Robert F. Ely is attached to the requisition papers, "Robert Ely, NMI," this Court holds that the burden of proving the relator's identity shifts to the state.

The state successfully bore the initial burden. As pointed out by the state in Respondent's Response to Relator's Memoranda, this Court can look past any naming discrepancies if the person arrested is, in fact, the identical person indicted in the demanding state.

The case law uses even stronger language. The Illinois Supreme Court has held that if the person arrested is, in fact, .the person indicted in the demanding state, "the name in the warrant is immaterial." People ex rel . Maypole at Page 594.

This Court after reviewing the evidence finds, in fact, that Robert F. Ely is, in fact, the person arrested and is, in fact, the person demanded by the state of Michigan.

Now we move to the central issue before this Court. As mentioned earlier, relators Ely and Miller presented this Court with their respective petitions for habeas corpus. The essence of a habeas corpus petition is that an individual is being illegally detained. To determine whether or not Ely and Miller have been illegally detained, this Court must look to the law governing extraditions in the State of Illinois.

Neither respondent nor the relators differ on the proper legal standards to apply in this case.

First of all, an extradition warrant issued by the Governor, properly admitted into evidence and reciting the essential facts, affords a prima facie case that the accused is a fugitive from justice. People versus Lynch, 16 Ill. 2d, Page 380, 1959. With regard to both Ely and Miller, this Court finds that such a prima facie case has been made.

Once this prima facie case is made, the burden shifts to the accused to prove that his detention is illegal. People ex rel . Borelli, B-o-r-e-l-l-i, versus Sain, S-a-i-n, 16 Ill. 2d,

321, a 1959 Illinois Supreme Court case. In order to sustain a claim of illegal detention, the accused must prove one of the following three things:

First, that he is not substantially charged with an offense under the laws of the demanding state; second, that he is not the person charged with the offense in the demanding state; three, that he is not a fugitive from justice. The case that sets forth these principles is People ex rel. Douglas versus Woods, 39 Ill. 2d. 381, a 1968 case.

Because they have been charged with offenses in Michigan and because they are the persons charged with such offenses, both Ely and Miller focus on proving the third point; namely, that their detention is illegal because they are not fugitives from justice.

To disprove their fugitivity, both Ely and Miller claim that they were in Illinois on the days they're alleged to have committed the crimes in Michigan.

The standard for evaluating this claim is clear. The Illinois Supreme Court in the case of Garner versus Clutts, C-l-u-t-t-s, 20 Ill. 2d, 447, a 1960 case, held, quote, "one detained under a fugitive warrant may be judicially discharged only when it is so conclusively proved that no question can be made that the person was not in the demanding state when the crime is said to have been committed," end of quote. That is most particularly at 20 Ill. 2d at 455.

Another Illinois Supreme Court case articulated the standard in terms more recognizable to criminal courts. The accused must prove that he was not in the state "beyond *a* reasonable doubt." The case of O'Mara versus Oglive, 35 Ill. 2d, 287, particularly at 289, a 1966 case.

So the question before this Court narrows:

With respect to Ely, the question becomes, is this Court convinced beyond a reasonable doubt that Ely was in the State of Illinois on December 11th and 12th, 2001, the same days he is accused of committing the crimes of home invasion and conspiracy to home invasion in the state of Michigan.

With respect to Miller, the question becomes, is this Court convinced beyond a reasonable doubt that Miller was

in the State of Illinois on December 11th and December 13th, 2001, the same days he is accused of committing the crimes of home invasion and conspiracy to home invasion and unarmed. robbery in the state of Michigan.

For a little more than a year, this Court presided over six days of testimony and oral arguments in an attempt to answer these distinct questions. What follows is a short summary of the evidence placing the relators in the State of Illinois.

In an attempt to prove that he was in Illinois on December 11th and 12th of 2001, Mr. Ely presented the following witnesses:

Baja Pileczka, P-i-l-e-c-z-k-a, testified that Ely kept is 1:15 appointment with her at her place of business on December 11th, 2001.

Dewey Paccagnini,

P-a-c-c-a-g-n-i-n-i, the Ely family's insurance broker, testified that he recalled meeting with Ely on December 11th between the hours of 3:30 and 4:00 o'clock in the afternoon.

Miss Mary Lou Eisenhauer, the Deputy Director of Business Services for the City of Chicago's Department of Revenue, testified regarding the procedures used when an individual comes to the business licensing unit and requests information.

Miss Anna Lopez, an employee at the Chicago—City of Chicago's Department of Revenue, testified that she met with Ely regarding a business license application on December 12, 2001, and December 14, 2001.

In an attempt to prove that he was in Illinois on December 11th and December 12th, 2001, Miller presented the following witnesses:

Dr. Amy Klichowski,

K-l-i-c-h-o-w-s-k-i, testified that while she could not remember treating Miller on December 9, 2001, for symptoms related to kidney stones, an emergency department record for Miller indicated she did treat him for kidney stones on that day, December 9, 2001.

Miss Nuestra Omerovic, N-u-e-s-t-r-a, O-m-e-r-o-v-i-c, testified she delivered flowers to Miller's home on December 13, 2001, and during that delivery, she testified she saw Miller in bed.

Danny Johnson, Michael Miller's brother, testified that Miller, upon returning home from the emergency room on December 9, 2001, stayed in bed for the next week.

Finally, Miller, himself, took the stand and testified that he did not leave the bed on December 11, 2001, or December 13, 2001, and the reason was pain associated with kidney stones.

A review of the evidence presented by the relators does not end the inquiry. Now this Court must decide if the evidence presented by the relators convinces this Court beyond a reasonable doubt that they were in the State of Illinois on the dates in question.

Clearly, such a decision requires an evaluation of the evidence. This much is clear. Habeas corpus proceedings are not the proper forum to try questions of alibi or any question as to the guilt or innocence of the accused. That's the Clutts case at 455. 20 Ill. 2d, 455. Rather, the inquiry focuses on the whereabouts of the relators on the days in question.

Given that the evidence presented by the relators tends to prove they were in Illinois on the dates in question, this Court must now evaluate evidence placing the relators in Michigan.

At the very least the state must create a contradictory factual issue as to the whereabouts of Ely and Miller on the dates in question, and the case that sets that forth is Nelson versus Illinois, 11 Illinois Appellate Court 3d, most particularly, 1092 and 1094, a 1973 appellate case. If no contradictory factual issues exist after considering the evidence presented by the relators, it follows that the relators conclusively proved they were not in the demanding state.

We've reviewed Illinois law carefully, and Illinois case law provides little guidance as to what exactly constitutes a contradictory factual issue. It is clear, however, that in and of itself, the extradition warrant and the supporting

papers are not sufficient to create a credible factual dispute. Otherwise, the Illinois Appellate Court has held, quote, "the effect would be to give the warrant a conclusive presumption since in all cases the evidence would be merely contradictory." And the case is Nelson versus People of the State of Illinois, 11 Illinois Appellate 3d, 1092 and 1094, 1973, 3rd District case.

This Court finds, as a matter of fact, that the state, in responding to the evidence provided by both Miller and Ely, failed to prove the existence of a contradictory factual issue. That is not to say the state did not seek to contradict the evidence presented by Mr. Miller and Mr. Ely. The state did, in fact, pursue such a contradiction.

In making this finding, the Court starts from a premise. That is, whether or not the state created a contradictory factual issue depends on the quality of the facts presented. It cannot be that the state by mere presentation of evidence that differs from the evidence presented by the relators creates a contradictory factual issue or issues. If that were true, the hearings conducted by this Court over the last year would be reduced to nothing more than a waiting game, waiting for the state to present evidence, any evidence, differing from the evidence presented by the relators.

The only evidence tying Ely and Miller to the state of Michigan and those offenses is the testimony of John Calabrese, a lieutenant from the East Point, Michigan, Police Department. Before moving on, I want to make clear that I respected Lieutenant Calabrese for being here. I respect law enforcement officers in general. I do not believe any misrepresentations were made to the Court by Lieutenant Calabrese.

I do find, however, that the method by which the relators were identified in Michigan calls into issue the credibility of—the reliability of the eye witness identifications. Calabrese, after receiving a tip from an as-of-yet unidentified source, came to the conclusion that Chicago gypsies were responsible for the string of burglaries.

Acting on that honestly held belief, Lieutenant Calabrese showed the elderly burglary victims—two of whom were close to ninety years old—a group of photographs containing only Chicago gypsies.

It should also be noted that the initial descriptions of the suspects found in the police reports did not match the relators in this case. Among other substantial discrepancies, the reports described the suspects in the string of burglaries as alternately white males and Italian males. Again, these witness identifications are the only evidence placing Ely and Miller in the state of Michigan on the dates in question.

Given the strength of the evidence presented by the relators and the relative weakness of the evidence presented by the state, I find the following:

First, Mr. Ely proved conclusively or beyond a reasonable doubt that he was in the State of Illinois on December 11th and December 12th of the year 2001; and additionally, I find that Mr. Miller proved conclusively or beyond a reasonable doubt that he was in the State of Illinois on December 11th and December 13th, 2001.

In accordance with these findings, relators[1] petitions for habeas corpus are granted. The Governor's warrants are recalled and quashed, and the petitions for extradition are dismissed. That will be the order.

MR. NOVELLI: Can we draft a written order?

THE COURT: You can draft a written order, whatever you need.

MR. NOVELLI: Will he be released and exonerated from his bond? THE COURT: Yes. MR. NOVELLI: Thank you, sir.

Judge, my understanding is that the state is filing a Notice of Appeal in this. My client is still exonerated from his bond?

THE COURT: State's filing a Notice of Appeal?

MS. CHASTER: Yes, Judge.

MR. NOVELLI: Can I get a copy?

MS. CHASTER: Here.

(Which were all the proceedings had in the above matter.)

NOTICE

The test of this opinion may be changed or corrected prior to the time for filing of a Petition for Rehearing or the disposition of the same.

SECOND DIVISION
SEPTEMBER 30, 2005

No. 1-03-3575; 03-3576 (Cons.)

ROBERT ELY and MICHAEL MILLER,	)	Appeal from the Circuit Court of Cook County.
Relators-Appellees,	)	
v.	)	HC No. 50232 & HC No. 50236
MICHAEL SHEAHAN, Sheriff of Cook County, Illinois,	)	The Honorable Paul P. Biebel, Jr., Judge Presiding.
Respondent-Appellant.	)	

PRESIDING JUSTICE GARCIA delivered the opinion of the court: In response to an extradition request from the Governor of Michigan, Governor's warrants were issued and relators, Robert Ely and Michael Miller, were arrested in Cook County, Illinois, as fugitives from justice. The Governor's warrant for Ely indicated that he was wanted for burglary-related crimes committed in Eastpointe, Michigan.[1] The Governor's warrant for filler indicated that he was wanted for a home invasion, conspiracy to commit home invasion, and unarmed robbery, committed in Eastpointe, Michigan. Pursuant to section 10 of the Uniform Criminal Extradition Act (Extradition Act) (725 ILCS 225/10 (West

[1] The Governor's warrant for Ely is not part of the record of this appeal. We, therefore, rely on Ely's petition for writ of habeas corpus, his memorandum of law in support of the petition, and the transcripts from the hearing on the petition.

2002)), both relators petitioned the circuit court of Cook County for a writ of habeas corpus claiming they were not in the State of Michigan at the time the offenses were allegedly committed. After a hearing, the circuit court granted the writs and quashed and recalled the Governor's warrants. The respondent, Michael Sheahan, sheriff of Cook County, appeals.

I. BACKGROUND

The State of Michigan sought the extradition of Ely and Miller in connection with a string of home invasions that occurred in December 2001 in Eastpointe, Michigan. Ely was charged with three counts of home invasion committed on December 12, and 14, 2001. Miller was charged with one count of home invasion committed on December 11, 2001, and one count of home invasion, one count of conspiracy to commit home invasion, and 1 count of unarmed robbery committed on December 13, 2001. In response to the extradition request, two Governor's warrants were issued. The Governor's warrants, along with supporting documentation, were introduced into evidence at the relators' hearing on their petitions for writs of habeas corpus. Each relator presented evidence supporting his claim that he was in Illinois at the time the offenses were committed. Lieutenant John Calabrese of the Eastpointe, Michigan, police department, testified concerning the identification of each relator by the robbery victims.

A. Evidence Regarding Relator Ely

Ely presented five witnesses to support his argument that he was not in the State of Michigan at the time the offenses were committed. Baja Pileczka, the owner of a nail salon, testified that on December 11, 2001, Ely kept a 1:15 p.m. appointment for a manicure, but he did not keep a 5:30 p.m. appointment for a massage. The respondent sought to impeach Pileczka with testimony from Lieutenant Calabrese, who testified that Pileczka told him that she had no clear recollection of the events of December 11, 2001.

Dewey Paccagnini, an insurance investment broker, testified that in the late afternoon on December 11, 2001, he

was with Ely at Ely's home, reviewing Ely's mother-in-law's insurance policy.

Anna Lopez, who works in the business licensing section of the City of Chicago's department of revenue (department), testified that Ely came to her office on December 12, 2001, and tried to apply for a business license. Lopez scheduled another appointment with Ely on December 14, 2001. Ely returned on December 14 but did not complete the application. During cross-examination, Lopez testified that she could not be certain that Ely visited the department on December 12 and 14, 2001.

The respondent sought to impeach Lopez with testimony from Mary Lou Eisenhauer, the deputy director of business services for the department, who testified that a license applicant generally would not see a public information officer unless he completed the necessary paperwork. The respondent also sought to impeach Lopez's testimony with that of Alexander Vroustonuris, the City : Chicago's inspector general, who testified that Lopez told him lat she could not identify Ely. Rosa Narvaez, Ely's investigator, also testified as to the licensing procedure at the Apartment.

Ely called Lieutenant Calabrese, who testified that he investigated a string of home invasions in Eastpointe, Michigan, and received information that members of a certain Chicago group were responsible for the crimes. He focused his investigation on this certain group despite the fact that the initial identifications of the perpetrators indicated that they were either "white male" or "male Italian." Calabrese had a book from tie Illinois State Police with photographs of "known home improvement-type crime offenders from Chicago." The book consisted of 23 pages with 10 to 12 photographs per page.

Calabrese showed this book to Vita Milano, an elderly woman ho was victimized on both December 12 and 14, 2001, by the same person. Milano identified Ely's photograph as the individual she personally observed commit the offense on December 12, 2001. Stephen Smiertka, a man of approximately 90 years of age, identified the photograph of Ely as one of the men who robbed him on December 11, 2001. Calabrese testified that the victims viewed the entire book of photographs and were very sure of the people that they identified.

Calabrese was recalled by Ely and testified to a conversation he had with "Sonny" Michael Miller, an individual who pleaded guilty to three misdemeanors in the same string of Burglaries. Sonny pleaded guilty to the three charges without any agreement that he would assist authorities with the remaining cases, but after he was sentenced, Sonny begged for a deal and said that he would identify those who were involved in the crimes. Sonny did not tell Calabrese who was involved but stated :hat Ely and Miller were not involved. Calabrese stated that he found the statement unworthy of belief because "very few people Ln this world *** are less credible than [Sonny,]" and the. statement did not match the evidence.

B. Evidence Regarding Relator Miller

Miller called four witnesses and testified on his own behalf :o support his claim that he was not in the State of Michigan at :he time the offenses occurred. Dr. Amy Klichowski testified that although she had no personal recollection, a hospital record existed from December 9, 2001, establishing that she treated filler for a kidney stone at the Ravenswood Hospital emergency department. Dr. James Daleo, who neither saw nor treated Miller, reviewed his hospital records and testified that the pain associated with passing a kidney stone was "one of the worst pains" a person could experience and that the intensity of the pain could wax and wane.

Nustra Omervic testified that on the afternoon of December 13, 2001, she delivered flowers to Miller's home, where Miller was in bed and looked pale. Although Omervic testified she was certain December 13 was a Friday, the circuit court took judicial notice that December 13, 2001, was actually a Thursday.

Danny Johnson, Miller's brother, testified that Miller did not leave his house from December 9 through December 16, 2001, because of the pain from his kidney stone. Johnson testified that Miller would not have been in Michigan with Ely because the men hated one another, their families had been feuding for more than 20 years, and Ely had an affair with Miller's wife.

Miller testified on his own behalf that he was not in Michigan at the time the offenses were committed but

stayed in in his house from December 9 through December 16, 2001. He testified that he would not leave Illinois because after successfully contesting a prior extradition request, it was his only safe haven.

As he testified regarding relator Ely, Lieutenant Calabrese testified that he showed the victims a book containing photographs of persons known to be involved in home-improvement-type crimes. Marie Smiertka identified the photograph of Miller 3 one of the men who robbed her in her home on December 11, 301. In addition, Cosma Agrusa identified the photographs of Miller and Sonny as the people who forced themselves into her house to rob her on December 13, 2001. Calabrese testified that the victims were very sure of the persons they identified. Calabrese again testified concerning the statement made by Sonny that the relators were not involved.

C. Circuit Court's Determination

After hearing all of the evidence, the circuit court granted Ely's and Miller's petitions. The court explained that the relators met their burden of proving beyond a reasonable doubt that they were in Illinois at the time of the offenses. The court found that the respondent failed to create a contradictory factual issue as to the relators' whereabouts on those days. The court found:

> "that the [respondent], in responding to the evidence provided by both Miller and Ely, failed to prove the existence of a contradictory factual issue. That is not to say the [respondent] did not seek to contradict the evidence presented by [Miller] and [Ely]. The [respondent] did, in fact, pursue such a contradiction.

In making this finding, the Court starts from a premise. That is, whether or not the [respondent] created a contradictory factual issue depends on the quality of the facts presented. It cannot be that the [respondent] by mere presentation of evidence that differs from the evidence presented by the relators creates a contradictory factual issue or issues. If that were true, the hearings conducted by this Court over the last year would be reduced to nothing more than a waiting game, waiting for the [respondent] to present

evidence, any evidence, differing from the evidence presented by the relators.

The only evidence tying Ely and Miller to the state of Michigan and those offenses is the testimony of John Calabrese, a lieutenant from the [Eastpointe], Michigan, Police Department. *** I do not believe any misrepresentations were made to the Court by Lieutenant Calabrese.

I do find, however, that the method by which the relators were identified in Michigan calls into issue the credibility of—the reliability of the eye witness identifications. Calabrese, after receiving a tip from an as-of-yet unidentified source, came to the conclusion that Chicago gypsies were responsible for the string of burglaries.

Acting on that honestly held belief, Lieutenant Calabrese showed the elderly burglary victims—two of whom were close to ninety years old—a group of photographs containing only Chicago gypsies.

It should also be noted that the initial descriptions of the suspects found in the police reports did not match the relators in this case. Among other substantial discrepancies, the reports described the suspects in the string of burglaries as alternatively white males and Italian males. Again, these witness identifications are the only evidence placing Ely and Miller in the state of Michigan on the dates in question.

Given the strength of the evidence presented by the relators and the relative weakness of the evidence presented by the [respondent]. *I* find the following:

> First, [Ely] proved conclusively or beyond a reasonable doubt that he was in the State of Illinois on December 11th and December 12th of the year 2001; and additionally, I find that [Miller] proved conclusively or beyond a reasonable doubt that he was in the State of Illinois on December 11th and December 13th, 2001." (Emphasis added.)

This appeal followed.

II. Analysis

A. Appellee Miller

Initially, we note that Miller did not submit an appellee's Brief with the court. Although a reviewing court is not compelled to serve as an advocate for an appellee, it may sustain the judgment of the trial court based on its review of the record justice may require. First Capitol Mortgage Corp. v. Talandis Construction Corp., 63 Ill. 2d 128, 133, 345 N.E.2d 493 (1976). "In other cases if the appellant's brief demonstrates prima facie reversible error and the contentions of the brief find support in the record the judgment of the trial court may be reversed." Talandis Construction Corp., 63 Ill. 2d at 133. Where "the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief," a reviewing court will decide the merits of the appeal. Talandis Construction Corp., 63 Ill. 2d at 133. In this case, because the record is simple and because we have the benefit of Ely's brief, we will decide the merits of the respondent's appeal as it affects Miller as well.

B. Standard of Review

Pursuant to Supreme Court Rule 341(e) (3), an appellant's brief "must include a concise statement of the applicable standard of review for each issue, with citation to authority." Official Reports Advance Sheet No. 21 (October 17, 2001), R. 341(e)(3), eff. October 1, 2001. Therefore, a reviewing court has an obligation to inform the parties of the standard of review that it employed in deciding the issues on appeal.

The parties disagree as to the proper standard of review. Relying on language in People v. Johnson, 206 Ill. 2d 348, 358, 794 N.E.2d 294 (2002), the respondent contends that the issue is a matter of law and our standard of review is de novo. Ely disagrees that Johnson supports such a standard of review here but does not set out an alternative standard. Ely suggests that some deference is owed to the trial court because its decision to discharge the relators was based on fact-findings and credibility determinations.

It appears the standard of review was established by our supreme court in People ex rel. James v. Lynch, 16 Ill. 2d

380, 385, 158 N.E.2d 60 (1959), cited by neither party. In affirming the quashing of a writ of habeas corpus and remanding the relator to the demanding state, our supreme court stated: "This conclusion cannot be disturbed unless it is contrary to the manifest weight of the evidence." Lynch, 16 Ill. 2d at 385. Eased on Lynch, we employ the standard of manifest weight of the evidence in our review of this appeal.[2]

C. Issue Presented by the Parties

The central dispute as set out by the parties is whether contradictory factual issues" were raised by the evidence presented at the habeas corpus proceeding. The respondent contends that the trial court erred in finding the absence of contradictory factual issues because its finding was the result of an improper weighing of the evidence concerning the circumstances of the victims' identification of the relators. The trial court therefore erred when it granted the writs and discharged the relators.

Ely contends that he presented "credible evidence that he was not in the [State of Michigan] at the time indicated in the rendition papers." It was then incumbent upon the respondent to present "evidence contradicting and impeaching of that evidence sufficient to create a credible factual issue." Ely contends that as to the evidence the respondent elicited from Lieutenant Calabrese, that evidence was hearsay and, therefore, not competent. As such, it was

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[2] In the context of a habeas corpus proceeding where the historical facts are "readily verifiable" (Michigan v. Doran, 439 U.S. 282, 289, 58 L. Ed. 2d 521, 527, 99 S. Ct. 530, 535 (1978)), and courts "may not weigh the evidence" regarding the presence or absence of the relator in the demanding state when the crimes occurred (People ex rel. Webb v. Babb, 5 Ill. 2d 35, 41, 123 N.E.2d 822 (1954)), there is a real question whether any deference is due on the ultimate question of whether to grant or quash a writ of habeas corpus so that a de novo standard of review ought to apply. See generally Johnson, 206 Ill. 2d at 360 (standard of review depends in part on "the degree to which the [trial] court must assess credibility, weigh facts, and draw inferences"); People v. Jones, 215 Ill. 2d 261, 268, 830 N.E.2d 541 (2005) (manifest weight of evidence applies to facts found by the trial court, but the ultimate question of relief is reviewed de novo).

insufficient to create a "credible factual issue to warrant extradition." Accordingly, the trial court properly determined that the relators were not in the State of Michigan on the dates of the offenses and, hence, not fugitives from justice.

No question is presented regarding the adequacy of the extradition warrants or supporting documents.[3]

D. Federal Law Governing Extraditions

Pursuant to section 10 of the Extradition Act (725 ILCS 225/10 (West 2002)), the relators filed petitions for writs of habeas corpus, each alleging that he was not a fugitive from justice.

> "A proceeding by habeas corpus under the Fugitives From Justice act [(Ill. Rev. Stat. 1937, ch. 60, par. 1, et seq.)][4], is a civil suit instituted by the petitioner for the protection of his own civil rights and not one by the Government to punish him for a crime. [Citations.] the return of a fugitive from one State to another is a Federal and not a State matter.
>
> It is governed by the constitution of the United States and the act of Congress passed pursuant thereto, and in these proceedings this court is bound by the decisions of the Supreme Court of the United States. [Citations.]" People ex rel. Guidotti v. Bell, 372 Ill. 572, 575, 25 N.E.2d 45 (1939).

As the United States Supreme Court noted:

> "The Extradition Clause was intended to enable each state to bring offenders to trial as swiftly as

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[3] As earlier noted, the extradition warrant regarding Ely is not in the record. But as no issue is raised regarding the sufficiency of the extradition documents we presume an arrest warrant signed by a judge in Macomb County, Michigan, exists for Ely as one in the record is present for Miller.

[4] This Act is now the Extradition Act pursuant to which the relators filed their habeas corpus petitions. 725 ILCS 225/1 et seq. (West 2002).

> possible in the state where the alleged offense was committed. [Citations.] The purpose of the Clause was to preclude any state from becoming a sanctuary for fugitives from justice of another state and thus `balkanize' the administration of criminal justice among the several states." Michigan v. Doran, 439 U.S. 282, 287, 58 L. Ed. 2d 521, 526, 99 S.Ct. 530, 534 (1978).

The concepts of comity and full faith and credit play an integral role in the extradition process. Doran, 439 U.S. at 287-88, 58 L.Ed. 2d at 526-27, 99 S.Ct. at 534-35.

Hence, extradition proceedings in the asylum state are meant 3 be summary and ministerial proceedings; they are not judicial inquiries into the merits of the charges. Doran, 439 U.S. at 38, 58 L.Ed. 2d at 527, 99 S.Ct. at 535. While the Governor's determination of whether a person is a fugitive from justice is a question of fact (Munsey v. Clough, 196 U.S. 364, 372, 49 L.Ed. 515, 517, 25 S.Ct. 282, 284 (1905)),

> "[o]nce the governor has granted extradition, a court considering release on habeas corpus can do no more than decide (a) whether the extradition documents on their face are in order; (b) whether the petitioner has been charged with a crime in the demanding state; (c) whether the petitioner is the person named in the request for extradition; and (d) whether the petitioner is a fugitive. These are historic facts readily verifiable." Doran, 439 U.S. at 289, 58 L. Ed. 2d at-527, 99 S. Ct. at 535.

In this case, the only historical fact at issue is whether the relators are fugitives from the State of Michigan.

> "'One is a fugitive from justice, within the meaning of the extradition laws, where it is shown that he was in the demanding State on the date fixed in the charge against him and that he thereafter left the State, and he is a fugitive from the time of such leaving regardless of his purpose or motive in leaving.'" Cohen v. Sheahan, 298 Ill. App. 3d 961, 967, 700 N.E.2d 1122 (1998), quoting People ex rel. Shockley v. Hardiman, 152 Ill. App. 3d 38, 45, 504 N.E.2d 109 (1987). "It is well settled that the Governor's warrant constitutes a prima facie case that an accused is a fugitive from justice, and that after its

> introduction into evidence the burden of proof is then on the accused to show that he was not in the demanding State at the time of the offense charged. [Citations.]" People ex rel. O'Mara. v. Ogilvie, 35 Ill. 2d 287, 288, 220 N.E.2d 172 (1966).

The burden a relator must meet to warrant a discharge is an extremely heavy one. "When it is conceded, or when it is so inclusively proved, that no question can be made that the person is not within the demanding State when the crime is said to have been committed, and his arrest is sought on the ground only of a instructive presence at that time, in the demanding State, then the court will discharge the defendant." (Emphasis added.) Munsey, 196 U.S. at 374, 49 L.Ed. at 518, 25 S.Ct. at 285.

Twenty-four years later, this bright-line rule was further clarified by the United States Supreme Court in Doran, where the majority and the concurring opinions agreed: "[W]hen a neutral judicial officer of the demanding state has determined that probable cause exists, the courts of the asylum state are without power to review the determination." Doran, 439 U.S. at 290, 58 L.Ed. 2d at 528, 99 S.Ct. at 536 (opinion of Burger, C.J., joined by Stewart, White, Powell, Rehnquist, and Stevens, JJ.). "It is enough if the papers submitted by the demanding State in support of its request for extradition facially show that a neutral magistrate has made a finding of probable cause. If they do, it is not the province of the courts of the asylum State *** to probe the factual sufficiency of that finding." (Emphasis in original.) Doran, 439 U.S. at 297, 58 L.Ed. 2d at 532-33, 99 S. Ct. at 539 (Blackmun, J., concurring, joined by Brennan and Marshall, JJ.).

Here, there is no issue regarding the adequacy of the Governor's warrants and supporting documents, which included arrest warrants signed by a Michigan judge upon a showing of probable cause. The relators only contention against the rendition warrants amounts to an alibi defense. This is precisely the sort of contention that the United States Supreme Court foreclosed in Doran. This prohibition of a reexamination of "the factual basis for the finding of probable cause which accompanies the requisition from the demanding state" (Doran, 439 J.S. at 286, 58 L.Ed. 2d at 525, 99 S.Ct. at 534) was recognized by our supreme court six years prior to Doran in People ex rel. Kubala v. Woods,

52 Ill. 2d 48, 54, 284 N.E.2d 286 (1972), where the court held, "even though the complaints, standing alone, do not show probable cause, they are affidavits made before a magistrate *** and are sufficient to support the rendition warrant." Accordingly, the Kubala court affirmed the quashing of the writ of habeas corpus and the remanding of the relator to the custody of the sheriff of Cook County.[5]

Because the extradition warrants in this case include arrest warrants signed by a Michigan judge upon findings of probable cause, the trial court's finding that the relators where not present in the State of Michigan on the dates of the offenses charged is against the manifest weight of the evidence. Inquiry into the factual basis for the arrest warrants for the relators was foreclosed to the trial court. It was sufficient that the arrest warrants were issued by a judge upon a finding of probable cause to support the rendition warrants. Kubala, 52 Ill. 2d. at 54. Thus, the trial court erred in discharging the relators.

F. Illinois Case Law

Even if we decide this appeal upon the issue presented by the parties—whether contradictory factual issues were raised by the evidence in the habeas proceeding—the same result obtains. As earlier noted, the burden of showing that a relator is not in the demanding state at the time of the offense charged in the extradition warrant is an extremely heavy one. "'[O]nly when it is so conclusively proved that no question can be made that the person was not within the demanding State when the crime is said to have been committed can he be discharged.'" (Emphasis added.) People ex rel. Blassick v. Callahan, 50 Ill. 2d 330, 336, 279 N.E.2d 1 (1972), quoting People ex rel. Webb v. Babb, 5 Ill. 2d 35, 41, 123 N.E.2d 822 (1954). "[T]o entitle one to release on

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[5] The holdings of Doran and Kubala cast substantial doubt on the continuing authority of the two cases primarily relied upon by Ely: Nelson v. People, 11 Ill. App. 3d 1092, 297 N.E.2d 172 (1973), and People v. Ryan, 129 Ill. App. 3d 932, 473 N.E.2d 561 (1985), where the courts questioned any "conclusive presumption"regarding the extradition warrants. However, because the narrow issue present in Nelson and Ryan is not present here, we restrict our treatment of each case below to distinguishing each.

habeas corpus, it must appear from the evidence, beyond all reasonable doubt, that the relator was without the demanding State when the offense was committed. [Citations.]" [Emphasis added.) Ogilvie, 35 Ill. 2d at 289. Judicial interference with the Governor's warrant is to be avoided, "unless that order be so palpably and conclusively shown to be wrong as to warrant an inference of fraud or inadvertence." (Emphasis added.) Bell, 372 Ill. at 577.

In a habeas corpus proceeding, the question of fact of whether the relator is a fugitive from justice turns solely on the presence or absence of contradictory factual issues regarding his whereabouts when the charged offense was committed. If contradictory factual issues have been raised, then the relator has failed to meet his burden to overcome the respondent's prima facie case. "[The habeas petitioner] insist[s] that because no witness appeared to directly controvert the alibi evidence offered that evidence must be taken as true and the petitioner discharged. This is not the law and it cannot be without entirely upsetting the constitutional provision." Bell, 372 Ill. at 577. If contradictory factual issues are not raised, then this may be tantamount to a concession by the respondent that the relator was not present in the demanding state when the crime was committed, and that the rendition warrant is based solely on "constructive presence." Munsey, 196 U.S. at 374, 49 L. Ed. at 518, 25 S. Ct. at 285. As to either determination, "the court may not weigh the evidence." Babb, 5 Ill. 2d at 41.

Ely contends that the trial court correctly granted the writs of habeas corpus and discharged the relators primarily on the authority of Nelson v. People, 11 Ill. App. 3d 1092, 297 N.E.2d 172 (1973). The trial court found Nelson to be controlling as well: "At the very least, the [respondent] must create a contradictory factual issue as to the whereabouts of Ely and Miller on the dates in question, and the case that sets that forth is [Nelson v. People, 11 Ill. App. 3d 1092, 297 N.E.2d 172 (1973)]." Ely cites additionally People v. Ryan, 129 Ill. App.3d 932, 473 N.E.2d 561 (1985). Both are Third District Appellate Court cases. Neither case provides any direct support for the discharging of the relators here.

In Nelson, the court explicitly confined its holding to where "[n]one of the witnesses, including the relator, was cross-examined by the respondent and no rebuttal evidence was presented by the respondent." Nelson, 11 Ill. App. 3d at

1094. To the respondent's contention that its prima facie case sufficed, the court replied: "We do not believe this position is tenable, since if true, the effect would be to give the warrant a conclusive presumption since in all cases the evidence would be merely contradictory." Nelson, 11 Ill. App. 3d at 1094. This reasoning was followed in Ryan, where the court held: "When the State introduces no evidence other than the extradition warrant and does not dispute the credibility of the petitioner's evidence that he was not in the demanding State at the time of the commission of the alleged crime, the extradition warrant itself is not sufficient to create contradictory factual issues." Ryan, 129 Ill. App. 3d at 935, citing Nelson. 11 Ill. App. 3d at 1094.

Here, as Ely concedes, in addition to challenging the credibility of the witnesses put forth by the relator, the respondent elicited testimony from Lieutenant Calabrese concerning the identifications of each relator by the victims of the crimes charged. In failing to be persuaded that this testimony raised contradictory factual issues, the trial court called into question the reliability of the victims' identifications of the relators and commented on the strength of the evidence presented by the relators and the "relative weakness" of the evidence presented by the respondent. Regarding whether the evidence raised contradictory factual issues, the court stated, "[that] depends on the quality of the facts presented" by the respondent. As the court determined "that the method by which the relators were identified in Michi gan calls into issue *** the reliability of the eyewitness identifications, "it found that each relator "proved conclusively or beyond a reasonable doubt that he was in the State of Illinois" on the dates the offenses occurred in Michigan, based on "the strength of the evidence presented by the relators and the relative weakness of the evidence presented by the [respondent]."

In further support of the trial court's conclusion, Ely contends that Lieutenant Calabrese's testimony was hearsay and therefore insufficient to raise contradictory factual issues in light of the credible testimony of his witnesses.

We first note that not only did relators fail to object to Lieutenant Calabrese's testimony, but they were first to

elicit testimony from Calabrese concerning the victims' identification Ely and Miller. Where hearsay evidence is admitted without objection, it is to be considered and given its natural, probative effect. People v. Robinson, 197 Ill. App. 3d 1012, 1016, 557 N.E.2d 267 (1990). Because Ely did not object to Calabrese's testimony, his argument that the evidence, as hearsay, is not admissible on the issue presented here is rejected. "Failure to raise an objection to that evidence precludes relator from questioning its admissibility on *** appeal." People ex rel. Molock v. Elrod, 53 Ill. App. 3d 14, 15, 368 N.E.2d 487 (1977). Moreover, the hearsay nature of Calabrese's testimony is not a basis to exclude it. See People ex rel. Emerson v. Pratt, 23 Ill. App. 3d 340, 344, 319 N.E.2d 108 (1974) (extradition hearings are not governed by rules of evidence for trials and more latitude is allowed). Under these circumstances, Ely's contention that this evidence should not be considered in determining whether contradictory factual issue were raised in the habeas proceedings is without merit.

Based on the evidence in the record, we find the opposite conclusion to that of the trial court to be clearly evident. This is not a case where the respondent does nothing more than make a "mere presentation of evidence that differs from the evidence presented by the relators." The respondent's case, except for calling into question the credibility of the relators[1] witnesses who seemingly place the relators in Illinois on the dates in question, rested on evidence concerning the crimes the relators were charged with committing in Michigan. In particular, identification evidence regarding the residential break-ins. This evidence goes directly to the crimes the relators were charged with committing in Michigan and differs substantially from the evidence presented by the relators. The State's evidence, beyond its prima facie case, clearly raised contradictory factual issues whether the relators were in fact in Michigan on the dates in question. The trial court holding otherwise is clearly against the manifest weight of the evidence, thus precluding the discharge of each relator. Bell, 372 Ill. at 578. The resolution of the factual issues presented in each relator's claim of alibi is properly left to be resolved in judicial proceedings in the State of Michigan.

III. Conclusion

Because the extradition warrants are supported by arrest warrants signed by a Michigan judge based on probable cause that the relators committed offenses in Michigan, the granting of the writs of habeas corpus and discharging each relator was against s manifest weight of the evidence. Also, based on our review of the evidence presented at the habeas proceeding, the relators did not meet their burden of conclusively showing that they were not in Michigan at the time of the alleged offenses. Under either analysis, we reverse the judgment of the circuit court and reinstate the Governor's warrants for Ely and Miller.

Reversed and remanded.

WOLFSON and HALL, JJ., concur.

ORDER

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

ROBERT ELY and MICHAEL MILLER,	)	
	)	
Relators-Appellees,	)	
	)	
v.	)	No. 1-03-3575;
	)	1-03-3576 (Cons.)
MICHAEL SHEAHAN,	)	
Sheriff of Cook County, Illinois,	)	
	)	
Respondent-Appellant.	)	

ORDER

This cause coming to be heard on Relator-Appellee, Robert Ely's Petition for Rehearing, the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the Petition for Rehearing is denied.

ORDER ENTERED November 30, 2005

/s/ Rodolfo Garcia
Justice

/s/ Warren D. Wolfson
Justice

/s/ Shelvin L.M. Hall
Justice

SUPREME COURT OF ILLINOIS

101801 CLERK OF THE COURT

SUPREME COURT BUILDING

SPRINGFIELD, ILLINOIS 62701

(217) 782-2035

March 29, 2006

Mr. Allan A. Ackerman
Attorney at Law
2000 N. Clifton Ave.
Chicago, IL 60614

No. 101801 - Robert Ely, petitioner, v. Michael Sheahan, Sheriff of Cook County, Illinois, respondent. Leave to appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for appeal matter of right or leave to appeal in the above entitled cause

The mandate of this Court will issue to the Appellate Court on April 20, 2006.

ACT 225. UNIFORM CRIMINAL EXTRADITION ACT

725 ILCS 225/1, et seq.

225 ILCS § 1. Definitions: Where appearing in this Act, the term "Governor" includes any person performing the functions of Governor by authority of the law of this State. The term "Executive Authority" includes the Governor, and a person performing the functions of Governor in a state other than this State, and the term "State", referring to state other than this State, includes any other state or territory, organized or unorganized, of the United States America.

225 ILCS § 2. Fugitives from Justice: Duty of Governor: Duty of Governor. Subject to the provisions of this Act, the provisions of t Constitution of the United States controlling, and any and all acts of Congress enacted in pursuance thereof, it the duty of the Governor of this State to have arrested and delivered up to the Executive Authority of any other state of the United States any person charged in that State with treason, felony, or other crime, who has fled from justice and is found in this State.

225 ILCS § 3. Form of Demand. No demand for the extradition of a person charged with crime in another state shall recognized by the Governor unless in writing alleging, except in cases arising under Section 6, that the accused was present in the demanding state at the time of the commission of the alleged crime, and that thereafter he fled from the state, and accompanied by a copy of an indictment found or by information supported by affidavit in the state having jurisdiction of the crime, or by a copy of an affidavit made before a magistrate there, together with a copy of any warrant which was issued thereupon; or by a copy of a judgment of conviction or of a sentence imposed execution thereof, together with a statement by the Executive Authority of the demanding state that the person claimed has escaped from confinement or has broken the terms of his bail, probation or parole. The indictment, information, or affidavit made before the magistrate must substantially

charge the person demanded with having committed a crime under the law of that state; and the copy of indictment, information, affidavit, judgment conviction or sentence must be authenticated by the Executive Authority making the demand.

225 ILCS § 4. Governor May Investigate Case. When a demand shall be made upon the Governor of this State by the Executive Authority of another state for the surrender of a person so charged with crime, the Governor may call upon the Attorney-General or any prosecuting officer in this State to investigate or assist in investigating the demand, and to report to him the situation and circumstances of the person so demanded, and whether he ought be surrendered.

225 ILCS § 5. Extradition of persons imprisoned or awaiting trial in another state or who have left the demanding state under compulsion. When it is desired to have returned to this State a person charged in this State with a crime, and such person imprisoned or is held under criminal proceedings then pending against him in another state, the Governor of this State may agree with the Executive Authority of such other state for the extradition of such person before the conclusion of such proceedings or his term of sentence in such other state, upon condition that such person returned to such other state at the expense of this State as soon as the prosecution in this State is terminated.

The Governor of this State may also surrender on demand of the Executive Authority of any other state any person in this State who is charged in the manner provided in Section 23 of this Act with having violated the laws of the state whose Executive Authority is making the demand, even though such person left the demanding state involuntarily.

Notwithstanding any other provision of this Act, any person incarcerated in any federal facility may be released the custody of the duly accredited officers or designees of those officers of a foreign state if:

(1) the person has violated the terms of his or her probation, post-release supervision, or parole or has unexpired sentence in the foreign state;

(2) the foreign state has personal jurisdiction over that person; and

(3) the foreign state has issued a valid warrant for the apprehension of that person or has issued a commitment order to serve a sentence in a state or local correctional facility. For that purpose no formalities shall be required other than establishing the authority of the officer and the identity of the person to be apprehended. All legal requirements to obtain extradition of fugitives from justice are expressly waived by the State of Illinois as those persons.

225 ILCS § 6. Extradition of Persons Not Present in Demanding State at Time of Commission of Crime. The Governor this State may also surrender, on demand of the Executive Authority of any other state, any person in this State charged in such other state in the manner provided in Section 3 with committing an act in this State, or in a third state, intentionally resulting in a crime in the state whose Executive Authority is making the demand.

225 ILCS § 7. Issue of Governor's Warrant of Arrest; Its Recitals. If the Governor decides that the demand should be complied with, he shall sign a warrant of arrest, which shall be sealed with the state seal, and be directed to any peace officer or other person whom he may think fit to entrust with the execution thereof. The warrant must substantially recite the facts necessary to the validity of its issuance.

225 ILCS § 8. Manner and Place of Execution. Such warrant shall authorize the peace officer or other person to who directed to arrest the accused at any time and any place where he may be found within the state and to command the aid of all peace officers or other persons in

the execution of the warrant, and to deliver the accused, subject to the provisions of this Act to the duly authorized agent of the demanding state.

225 ILCS § 9. Authority of Arresting Officer. Every such peace officer or other person empowered to make the arrest, shall have the same authority, in arresting the accused, to command assistance therein, as peace officers have by law in execution of any criminal process directed to them, with like penalties against those who refuse their assistance.

225 ILCS § 10. Rights of Accused Person: Application for relief by Habeas Corpus: Appeals. No person arrested upon such a warrant shall be delivered over to the agent whom the Executive Authority demanding him shall have appointed to receive him unless he shall first be taken forthwith before a judge of the circuit court of the county wherein he is arrested who shall inform him of the demand made for his surrender and of the crime with which he is charged, and that he has the right to demand and procure within a reasonable time and opportunity, not less than hours, legal counsel; and if the prisoner or his counsel shall state that he or they desire to test the legality of arrest, the judge of such court shall fix a reasonable time to be allowed him within which to apply for relief by habeas corpus. When such relief is applied for, notice thereof, and of the time and place of hearing thereon, shall be given to the prosecuting officer of the county in which the arrest is made and in which the accused is in custody, to the agent of the demanding state.

Either party may take an appeal from the judgment or order of the circuit court, as in other civil cases.

225 ILCS § 11. Wilful disobedience to 725 ILCS 225/10

1. Any officer who shall deliver to the agent for extradition of the demanding state a person in his custody under the Governor's warrant, in wilful disobedience to the last section, shall be guilty of a Class B misdemeanor.

225 ILCS § 12. Confinement in Jail When Necessary. The officer or persons executing the Governor's warrant of arrest, the agent of the demanding state to whom the prisoner may have been delivered may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or person having charge of him is ready to proceed on his route, such officer or person being chargeable with the expense of keeping.

The officer or agent of a demanding state to whom a prisoner may have been delivered following extradition proceedings in another state, or to whom a prisoner may have been delivered after waiving extradition in such other State, and who is passing through this state with such a prisoner for the purpose of immediately returning such prisoner to the demanding state may, when necessary, confine the prisoner in the jail of any county or city through which he may pass; and the keeper of such jail must receive and safely keep the prisoner until the officer or agent having charge of him is ready to proceed on his route, such officer or agent, however, being chargeable with the expense of keeping; provided, however, that such officer or agent shall produce and show to the keeper of such jail satisfactory written evidence of the fact that he is actually transporting such prisoner to the demanding state after a requisition by the Executive Authority of such demanding state. Such prisoner shall not be entitled demand a new requisition while in this State.

225 ILCS § 13. Arrest Prior to Requisition. Whenever any person within this State shall be charged on the oath of a credible person before any judge of this State with the commission of any crime in any other state and, except cases arising under Section 6, with having fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms of his bail, probation or parole, or whenever complaint shall have been made before any judge in this State setting forth on the affidavit of any credible person in another state that a crime has been committed in

such other state and that the accused has been charged in such state with the commission of the crime, and, except in cases arising under Section 6, has fled from justice, or with having been convicted of a crime in that state and having escaped from confinement, or having broken the terms his bail, probation or parole and is believed to be in this State, the judge shall issue a warrant directed to any peace officer commanding him to apprehend the person named therein, wherever he may be found in this State, and to bring him before the same or any other judge or court who or which may be available in or convenient of access the place where the arrest may be made, to answer the charge or complaint and affidavit, and a certified copy of the sworn charge or complaint and affidavit upon which the warrant is issued shall be attached to the warrant.

225 ILCS § 14. Arrest Without a Warrant. The arrest of a person may be lawfully made also by any peace officer or a private person, without a warrant upon reasonable information that the accused stands charged in the courts of a state with a crime punishable by death or imprisonment for a term exceeding one year, but when so arrested the accused must be taken before a judge with all practicable speed and complaint must be made against him under oath setting forth the ground for the arrest as in the preceding Section; and thereafter his answer shall be heard as if he had been arrested on a warrant.

225 ILCS § 15. Commitment to await requisition—Bail

If from the examination before the judge it appears that the person held is the person charged with having committed the crime alleged and, except in cases arising under Section that he has fled from justice, the judge must, by a warrant reciting the accusation, commit him to the county jail for such a time not exceeding 30 days and specified in the warrant, as will enable the arrest of the accused to be made under a warrant of the Governor on a requisition of the Executive Authority of the state having jurisdiction of the offense, unless the accused give bail as provided in the next section, or until he shall be legally discharged.

225 ILCS § 16. Bail-In What Cases-Conditions of Bond. Unless the offense with which the prisoner is charged is shown be an offense punishable by death or life imprisonment under the laws of the state in which it was committed a judge in this State may admit the person arrested to bail by bond, with sufficient sureties, and in such sum as he deems proper, conditioned for his appearance before him at a time specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this State.

225 ILCS § 17. Extension of Time of Commitment—Adjournment

If the accused is not arrested under warrant of the Governor by the expiration of the time specified in the warrant or bond, a judge may discharge him or m recommit him for a further period not to exceed 60 days, or a judge may again take bail for his appearance and surrender, as provided in Section 16, but within a period not to exceed 60 days after the date of such new bond.

225 ILCS § 18. Forfeiture of Bail. If the prisoner is admitted to bail, and fails to appear and surrender himself according to the conditions of his bond, the judge, by proper order, shall declare the bond forfeited and order his immediate arrest without warrant if he be within this State. Recovery may be had on such bond in the name of the state as the case of other bonds given by the accused in criminal proceedings within this State.

225 ILCS § 19. Persons Under Criminal Prosecution in This State at Time of Requisition. If a criminal prosecution has been instituted against such person under the laws of this State and is still pending the Governor, in his discretion, either may surrender him on demand of the Executive Authority of another state or hold him until he has been tried and discharged or convicted and punished in this State.

225 ILCS § 20. Guilt or Innocence of the Accused, when Inquired into. The guilt or innocence of the accused as to the crime of which he is charged may not be inquired into by the Governor or in any proceeding after the demand for extradition accompanied by a charge of crime in legal form as above provided shall have been presented to the Governor, except as it may be involved in identifying the person held as the person charged with the crime.

225 ILCS § 21. Governor May Recall Warrant or Issue Alias

The Governor may recall his warrant of arrest or may issue another warrant whenever he deems proper.

225 ILCS § 22. Fugitives from This State; Duty of Governors. Whenever the Governor of this State shall demand a person charged with crime or with escaping from confinement or breaking the terms of his bail, probation or parole in the State, from the Executive Authority of any other state, or from the chief justice or an associate justice of the Supreme Court of the District of Columbia authorized to receive such demand under the laws of the United State he shall issue a warrant under the seal of this State, to some agent, commanding him to receive the person so charged if delivered to him and convey him to the proper officer of the county in this State in which the offense was committed.

225 ILCS § 23. Application for issuance of requisition—By whom made—Contents. I. When the return to this State of a person charged with crime in this State is required, the prosecuting attorney shall present to the Governor his written application for a requisition for the return of the person charged, in which application shall be stated the name of the person so charged, the crime charged against him, the approximate time, place and circumstances of its commission, the state in which he is believed to be, including the location of the accused therein at the time the application is made and certifying that, in

the opinion of the said prosecuting attorney the ends of justice require the arrest and return of the accused to this State for trial and that the proceeding is not instituted to enforce a private claim.

II. When the return to this State is required of a person who has been convicted of a crime in this State and has escaped from confinement or broken the terms of his bail, probation or parole, the prosecuting attorney of the county in which the offense was committed, the parole and pardon board, or the warden of the institution or sheriff of the county, from which escape was made, shall present to the Governor a written application for a requisition for the return of such person, in which application shall be stated the name of the person, the crime of which he was convicted, the circumstances of his escape from confinement or of the breach of the terms of his bail, probation or parole, the state in which he is believed to be, including the location of the person therein at the time application is made.

III. The application shall be verified by affidavit, shall be executed in duplicate and shall be accompanied by two certified copies of the indictment returned, or information and affidavit filed, or of the complaint made to the judge, stating the offense with which the accused is charged, or of the judgment of conviction or of the sentence. The prosecuting officer, parole and pardon board, warden or sheriff may also attach such further affidavits and other documents in duplicate as he shall deem proper to be submitted with such application. One copy of the application, with the action of the Governor indicated by endorsement thereon, and one of the certified copies of the indictment, complaint, information, and affidavits, or of the judgment of conviction or of the sentence shall be filed in the office of the Secretary of State to remain of record in that office. The other copies of all papers shall be forwarded with the Governor's requisition.

225 ILCS § 24. Costs and expenses. When the punishment of the crime shall be the confinement of the criminal

in the penitentiary, the expenses shall be paid out of the state treasury, on the certificate of the Governor and warrant the State Comptroller; and in all other cases they shall be paid out of the county treasury in the county wherein the crime is alleged to have been committed. The expenses shall be the fees paid to the officers of the asylum state, and all necessary travel in returning such fugitives. The necessary travel expenses allowed shall be the same, as near as may be, as the amounts for travel allowed pursuant to the rules and regulations of the Illinois Department Central Management Services. Before such accounts shall be certified by the Governor, or paid by the county, they shall be verified by affidavit, and certified to by the state's attorney of the county wherein the crime is alleged have been committed, and submitted therewith shall be the agent's authority or a certified copy of the waiver extradition.

225 ILCS § 24.1. Transportation of released prisoners: (a) Whenever a person is brought into this State on an extradition warrant or upon waiver of extradition to be tried for an offense within this State and is subsequently released from custody without being convicted of the offense for which he was brought into this State to be tried, it shall be the duty of the peace officer, sheriff or other official from whom he was released from custody to provide or offer the person transportation to the nearest public transportation facility if the municipality or county in which he was held does not have a public transportation facility.

(b) As used in this Section:

(1) "Public transportation facility" means a terminal or other place where one may obtain public transportation; and

(2) "Public transportation" means the transportation or conveyance of persons by means available to the general public, except for transportation by automobiles not used for conveyance of the general public as passengers.

225 ILCS § 25. Immunity from Service of Process in Certain Civil Actions. A person brought into this State by, or after waiver of, extradition based on a criminal charge shall not be subject to service of personal process in civil actions arising out of the same facts as the criminal proceeding to answer which he is being or has been returned, until has been convicted in the criminal proceeding, or, if acquitted, until he has had reasonable opportunity to return the state from which he was extradited.

225 ILCS § 26. Written waiver of extradition proceedings. Any person arrested in this State charged with having committed any crime in another state or alleged to have escaped from confinement, or broken the terms of his bail, probation or parole may waive the issuance and service of the warrant provided for in Sections 7 and 8 and all other procedure incidental to extradition proceedings, by executing or subscribing in the presence of a judge of the circuit court a writing which states that he consents to return to the demanding state; provided, however, that before such waiver shall be executed or subscribed by such person it shall be the duty of such judge to inform such person of his rights to the issuance and service of a warrant of extradition and to obtain a relief by habeas corpus provided for in Section 10.

If and when such consent has been duly executed it shall forthwith be forwarded to the office of the Governor of this State and filed therein. The judge shall direct the officer having such person in custody to deliver forthwith such person to the duly accredited agent or agents of the demanding state, and shall deliver or cause to be delivered to such agent or agents a copy of such consent; provided, however, that nothing in this Section shall be deemed to limit the rights of the accused person to return voluntarily and without formality to the demanding state, nor shall this waiver procedure be deemed to be an exclusive procedure or to limit the powers, rights or duties of the office of the demanding state or of this State.

225 ILCS § 27. Non-Waiver by This State. Nothing in this Act contained shall be deemed to constitute a waiver by this State of its right, power or privilege to try such demanded person for crime committed within this State, or of its right, power or privilege to regain custody of such person by extradition proceedings or otherwise for the purpose trial, sentence or punishment for any crime committed within this State, nor shall any proceedings had under this Act which result in, or fail to result in, extradition be deemed a waiver by this State of any of its rights, privilege or jurisdiction in any way whatsoever.

225 ILCS § 28. No Right of Asylum. No Immunity from Other Criminal Prosecutions While in This State. After a person has been brought back to this State by, or after waiver of extradition proceedings, he may be tried in this State for other crimes which he may be charged with having committed here as well as that specified in the requisition for his extradition.

225 ILCS § 29. Interpretation. The provisions of this Act shall be so interpreted and construed as to effectuate its general purposes to make uniform the law of those states which enact it.

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 725, Criminal Procedure

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

ROBERT ELY,	)	
	)	Dorothy Brown
Plaintiff,	)	CLERK OF CIRCUIT COURT
	)	
vs.	)	H.C. NO.: 50232
	)	
SHERIFF OF COOK COUNTY, ILLINOIS	)	
	)	
Defendant.	)	

PETITION FOR WRIT OF HABEAS CORPUS

The plaintiff respectfully represents to this Honorable Court that he is in the custody of the Sheriff of Cook County, Illinois, and the cause of the arrest and detention is a supposed warrant issued by the Governor of the State of Illinois.

The plaintiff further represents that he is entitled under the law to a hearing on Habeas Corpus to test the legality of said arrest and detention. In support of the request for hearing, the plaintiff claims as follows:

The petitioner is in custody on said warrant due to his having been charged with the crime of home invasion, three counts, alleged to have occurred on December 11, 2001 at Springer Street, and on December 12, and December 14, 2001, at Almond Street, all in East Pointe, Michigan. The charges originate out of the 38th District Court, East Pointe, Michigan, MI Warrant No. M15036000. Counsel for Petitioner has confirmed this information with the 38th District Court (586) 445-5020. Petitioner was not in the State of Michigan at any time on the dates alleged. The Petitioner has not left the State of Illinois since September 7, 1995, due to an attempted extradition from Illinois to New York State. In that case, Petitioner was falsely accused of being in New York on that date. It was established before the Honorable Thomas Fitzgerald that the Petitioner was in Chicago on that date. Judge Fitzger-

ald quashed the warrant, creating an effective "safe haven" in Illinois for the Petitioner from any future extradition in New York.

Specifically, on December 11, 2001, the Petitioner was present in Chicago to obtain a manicure, massage and hair cut. Between 3:00 p.m. and 5:00 p.m. on that day, Petitioner met with an insurance broker, Dewey Taloti in Chicago. Counsel has confirmed both alibis.

On December 12, 2001, Petitioner appeared before the City of Chicago Police Information Officer, Anna L. Lopez, during the late morning, early afternoon hours of December 12, 2001 in her office at 121 North LaSalle Street, Chicago, Illinois. Petitioner was there to apply for a Home Occupation license for his sole-proprietor business, Sam's Roofing. Counsel has spoken with Ms. Lopez and confirmed Petitioner's appearance. On that same date, Ms. Lopez asked Petitioner to return on December 14, 2001 with certain required documents he was missing. Ms. Lopez wrote the December 14, 2001 appointment on a card she gave Petitioner (See Attached). Ms. Lopez specifically recalls Petitioner returning to her office on that date due to a confrontation she had with Petitioner over the required documents. At that time, the matters were resolved and the license eventually issued to the Petitioner.

Wherefore, the Plaintiff prays that a Writ of Habeas Corpus issue directed tot he Sheriff of Cook County, Illinois, so that the said Plaintiff may be forthwith brought before this Honorable Court and that upon the return of the Writ a day be fixed for a hearing to the end that the legality of said arrest and detention may be inquired into and determined.

/s/ Robert A. Novelle

ROBERT A. NOVELLE, Attorney for Petitioner